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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/205,096 12/03/98 DRACHMAN

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HM12/0328

EXAMINER

BANNER & WITCOFF  
1001 G STREET N W ELEVENTH FLOOR  
WASHINGTON DC 20001-4597

SORBELLO, E

ART UNIT

PAPER NUMBER

1633

DATE MAILED:

03/28/00

Please find below and/or attached an Office communication concerning this application proceeding.

Commissioner of Patents and Trad marks

# Office Action Summary

Application No.

09/205,096

Applicant(s)

DRACHMAN, DANIEL B.

Examiner

Eleanor Sorbello

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1633

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 30 days MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claims 1-40 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some \* c) ☐ None of the CERTIFIED copies of the priority documents have been:
1. ☐ received.
2. ☐ received in Application No. (Series Code / Serial Number) \_\_\_\_.
3. ☐ received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

## Attachment(s)

- 14) ☐ Notice of References Cited (PTO-892)
- 15) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 16) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 17) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_.
- 18) ☐ Notice of Informal Patent Application (PTO-152)
- 19) ☐ Other:

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## DETAILED ACTION

### *Election/Restrictions*

1. This application contains claims directed to the following patentably distinct species of the claimed invention: (i) CTLA4Ig; (ii) Fas ligand; (iii) antibody to Fas ligand; (iv) truncated form of FADD; (v) cells expressing CTLA4Ig; (vi) single chain F<sub>v</sub>; in regards to a product detrimental to Antigen Presenting Cells (APCs).

This application also contains claims directed to distinct species in regards to the viral vector: (a) vaccinia virus; (b) Moloney Leukemia Virus.

2. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently claims 1-3, 16-17, 20, 24-25, 29, 32, 33, 37-40 are generic.

3. Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

4. Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims

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are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

5. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

6. Any inquiry concerning this communication should be directed to Eleanor Sorbello whose telephone number is (703) 308-6043. The examiner can normally be reached on Mondays-Fridays from 6.30 a.m. to 3.00 p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John LeGuyader, can be reached on (703) 308-0447. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4242. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

*Deborah Clark*  
DEBORAH J. CLARK  
PATENT EXAMINER